

AMENDED IN ASSEMBLY MAY 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1043

Introduced by Assembly Member Torres

February 18, 2011

~~An act to add Chapter 35 (commencing with Section 22949) to Division 8 of the Business and Professions Code, relating to cellular telephone equipment. An act to amend Section 601 of, and to add Section 729.4 to, the Welfare and Institutions Code, relating to juveniles.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, Torres. ~~Cellular telephones equipment: matter depicting a minor engaging or simulating sexual conduct. Juveniles: sexting.~~

Existing law provides that any person under the 18 years of age who engages in certain noncriminal behavior, including persistently or habitually refusing to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, is within the jurisdiction of the juvenile court which may adjudge that person a ward of the court. Under existing law, juvenile court proceedings to declare a minor a ward of the court for noncriminal behavior are commenced by the filing of a petition by the probation officer. Existing law authorizes the juvenile court to order these minors to perform community service for a total time not to exceed 20 hours, as specified.

This bill would extend the juvenile court's jurisdiction to also include minors who engaged in sexting, as defined, images of themselves or other minors, thereby expanding the duties of the probation officer and imposing a state-mandated local program. The bill would, notwithstanding the provision described above, require a court to order

a minor who engaged in sexting to perform 24 or 40 hours of community service, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law regulates the conduct of various types of businesses and also establishes the Department of Consumer Affairs, which is under the control of a civil executive officer known as the Director of Consumer Affairs. Existing law prohibits the knowing possession or control of specified material depicting a person under 18 years of age personally engaging in or simulating sexual conduct.~~

~~This bill would, on and after July 1, 2012, require a retailer who sells cellular telephone equipment or contracts for cellular telephone service to provide customers in specified transactions with a brochure, in a form approved by the Director, describing the prohibition against controlling or possessing an image of a minor engaging in, or simulating, sexual conduct, and would make a violation of this requirement an infraction. The bill would require the Director to notify retailers of the requirement to provide customers with this brochure.~~

~~Because the bill would make the violation of its provisions by a retailer a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 601 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 601. (a) Any person under the age of 18 years who *meets any*
- 4 *of the following criteria is within the jurisdiction of the juvenile*

1 court, which may adjudge the person to be a ward of the court:
2 ~~persistently~~

3 (1) *He or she persistently* or habitually refuses to obey the
4 reasonable and proper orders or directions of his or her parents,
5 guardian, or custodian, or ~~who~~ is beyond the control of that ~~person,~~
6 ~~or who is person.~~

7 (2) *He or she is* under the age of 18 years when he or she
8 violated any ordinance of any city or county of this state
9 establishing a curfew based solely on age ~~is within the jurisdiction~~
10 ~~of the juvenile court which may adjudge the minor to be a ward~~
11 ~~of the court.~~

12 (3) *He or she engaged in sexting, as defined in Section 729.4,*
13 *images of himself or herself or another minor.*

14 (b) If a minor has four or more trancies within one school year
15 as defined in Section 48260 of the Education Code or a school
16 attendance review board or probation officer determines that the
17 available public and private services are insufficient or
18 inappropriate to correct the habitual truancy of the minor, or to
19 correct the minor's persistent or habitual refusal to obey the
20 reasonable and proper orders or directions of school authorities,
21 or if the minor fails to respond to directives of a school attendance
22 review board or probation officer or to services provided, the minor
23 is then within the jurisdiction of the juvenile court which may
24 adjudge the minor to be a ward of the court. However, it is the
25 intent of the Legislature that no minor who is adjudged a ward of
26 the court pursuant solely to this subdivision shall be removed from
27 the custody of the parent or guardian except during school hours.

28 (c) To the extent practically feasible, a minor who is adjudged
29 a ward of the court pursuant to this section shall not be permitted
30 to come into or remain in contact with any minor ordered to
31 participate in a truancy program, or the equivalent thereof, pursuant
32 to Section 602.

33 (d) Any peace officer or school administrator may issue a notice
34 to appear to a minor who is within the jurisdiction of the juvenile
35 court pursuant to this section.

36 *SEC. 2. Section 729.4 is added to the Welfare and Institutions*
37 *Code, to read:*

38 *729.4. (a) For purposes of this section, "sexting" means*
39 *creating, sharing, forwarding, possessing, or soliciting or coercing*
40 *another to create, share, forward, or possess an image depicting*

1 *sexual conduct, as defined in subdivision (b) of Section 311.4 of*
2 *the Penal Code, using a handheld or other electronic device.*

3 *(b) (1) Notwithstanding Section 727.5, if a minor is found to*
4 *be a person described in Section 601 because he or she engaged*
5 *in sexting images of himself or herself or another minor, the court*
6 *shall order the minor to perform 24 hours of community service.*

7 *(2) If the court finds that the minor has repeatedly engaged in*
8 *sexting images of himself or herself or another minor, the court*
9 *shall order the minor to perform 40 hours of community service.*

10 *SEC. 3. If the Commission on State Mandates determines that*
11 *this act contains costs mandated by the state, reimbursement to*
12 *local agencies and school districts for those costs shall be made*
13 *pursuant to Part 7 (commencing with Section 17500) of Division*
14 *4 of Title 2 of the Government Code.*

15 ~~SECTION 1. Chapter 35 (commencing with Section 22949)~~
16 ~~is added to Division 8 of the Business and Professions Code, to~~
17 ~~read:~~

18
19 ~~CHAPTER 35. CELLULAR TELEPHONE EQUIPMENT~~
20

21 ~~22949. On and after July 1, 2012, a retailer shall not sell cellular~~
22 ~~telephone equipment or a contract for cellular telephone equipment~~
23 ~~service, or renew a contract for cellular telephone service, unless~~
24 ~~the retailer provides the customer with a brochure, in a form~~
25 ~~approved by the Director of Consumer Affairs, describing the~~
26 ~~prohibition in Section 311.11 of the Penal Code against possessing~~
27 ~~or controlling an image of a minor engaging in, or simulating,~~
28 ~~sexual conduct.~~

29 ~~22949.1. The Director of Consumer Affairs shall notify all~~
30 ~~retailers in this state that engage in the type of business described~~
31 ~~in Section 22949 of the requirements of that section.~~

32 ~~22949.2. A violation of Section 22949 is an infraction,~~
33 ~~punishable by a fine of two hundred fifty dollars (\$250) for the~~
34 ~~first violation and by a fine of five hundred dollars (\$500) for each~~
35 ~~subsequent violation.~~

36 ~~No reimbursement is required by this act pursuant to Section 6~~
37 ~~of Article XIII B of the California Constitution because the only~~
38 ~~costs that may be incurred by a local agency or school district will~~
39 ~~be incurred because this act creates a new crime or infraction,~~
40 ~~eliminates a crime or infraction, or changes the penalty for a crime~~

1 ~~or infraction, within the meaning of Section 17556 of the~~
2 ~~Government Code, or changes the definition of a crime within the~~
3 ~~meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

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